

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:04-CR-43-F

UNITED STATES OF AMERICA

v.

MARCUS O. SMITH,

Defendant.

)
)
)
)
)
)

ORDER

This matter is before the court on the *pro se* Motion to Reduce Sentence [DE-35] filed by Defendant Marcus O. Smith (“Smith”).

Smith entered a plea of guilty, pursuant to a plea agreement, on April 26, 2004, to possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). On August 2, 2004, Smith was sentenced by this court to one hundred fifty (150) months imprisonment, consecutive to any other previous state or federal sentence. Smith’s appeal to the Fourth Circuit was dismissed on July 27, 2005, and his application to the Supreme Court was denied on December 2, 2005. Smith, on November 22, 2006, filed a petition pursuant to 28 U.S.C. § 2255. On March 9, 2009, the court, upon consideration, denied such request.


Subsequent to this denial, Smith, on April 6, 2012, filed the *pro se* Motion to Correct Judgment [DE-29] seeking an order amending or “correcting” his judgment so that he may receive credit towards his federal sentence for time served in state custody between November 2003 and February 2005. However, as explained *thoroughly* in the April 10, 2012, order issued by this court, the conduct that resulted in the state conviction and sentence occurred on or about October 29, 2001

and did not appear to have been related to the arrests in 2003 leading to the federal conviction and sentence. Therefore, Smith was not entitled to credit for that time off his current federal sentence. On June 14, 2012, Smith filed his Motion for Reconsideration [DE-33] of the court's April 10, 2012, order denying his Motion to Correct Judgment [DE-29]. This motion was denied on June 18, 2012.

Now, Smith, through this instant motion, again, appears to be seeking credit towards his federal sentence for time served while in state custody. More specifically, Smith states that "the federal court was aware of the defendant currently serving a state sentence and should have given the Defendant credit for any time spent in state custody." Presumably, based on this statement, and as Smith was sentenced by this court on August 2, 2004, it appears that he is seeking credit, again, for time served in state custody from November 2003 through February 2005. As this request is identical to the relief sought in his previous Motion to Correct Judgment [DE-29], the court will not rehash its explanation as to why such request is not appropriate. Smith is advised to carefully review the court's April 10, 2012, order [DE-30] which, in more than sufficient detail, addressed why he is not entitled to receive credit for time served in state custody towards his current federal sentence. Accordingly, Smith's *pro se* Motion to Reduce Sentence [DE-35] is **DENIED**.

SO ORDERED.

This the 24th day of July, 2012.



JAMES C. FOX
Senior United States District Judge